ETHICS COMMISSION

CITY AND COUNTY OF HONOLULU

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091
Phone: (808) 527-5573 $ Fax: (808) 527-6936 $ EMAIL: ethics@honolulu.gov
Internet: www.honolulu.gov/ethics

MUFI HANNEMANN
MAYOR

CHARLES W. TOTTO
EXECUTIVE DIRECTOR & LEGAL COUNSEL

March 20, 2006

MEMORANDUM

TO: ALL CITY AGENCIES

FROM: LEX R. SMITH, CHAIR AND MEMBERS OF THE HONOLULU ETHICS COMMISSION

SUBJECT: GUIDELINES ON GIFTS TO CITY AGENCIES

The Honolulu Ethics Commission issues these guidelines on the solicitation by or acceptance of gifts to any city agency. These guidelines replace the Revised Guidelines on Gifts of Travel, Lodging and Meals in Connection with Travel and the Guidelines in Conjunction with Conferences, which have been rescinded. **Please distribute** these guidelines to all personnel who may solicit or accept gifts to your agency.

Gifts to a city agency made to assist the agency in carrying out its mission have become commonplace. It is important that officers and employees understand that there are limitations on what type of gifts are appropriate and the manner in which the gifts may be requested or accepted. For questions regarding gifts to an individual officer or employee, rather than an agency, please review the Revised Guidelines on Gifts (available at www.honolulu.gov/ethics) or contact the Ethics Commission at 527-5573.

Generally, gifts to an agency made to further the proper goals, functions or business of the agency may be accepted as long as a reasonable person would not conclude that the gift was intended to reward or influence an officer or employee in carrying out his or her duty. Section

11-102(a), Revised Charter of Honolulu (RCH)[1]; *see also*, Sections 3-8.7 and 3-8.8, Revised Ordinances of Honolulu (ROH).[2]

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[1] **Revised Charter of Honolulu Section 11-102. Conflicts of Interest --**

No elected or appointed officer or employee shall:

(a) Solicit or accept any gift, directly or indirectly, whether in the form of money, loan, gratuity, favor, service, thing or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence the officer or employee in the performance of such person's official duties. Nothing herein shall preclude the solicitation or acceptance of lawful contributions for election campaigns.

[2] **Sec. 3-8.7 Gifts to mayor, prosecuting attorney, and appointed officer or employee--Prohibition under certain circumstances.**

(a) For the purpose of this section:

"Appointed officer or employee" means an officer or employee, as defined under Section 3-8.1, other than an elected officer. "Appointed officer" includes a member of a board or commission.

"Gift" means any gift, whether in the form of money, goods, service, loan, travel, entertainment, hospitality, thing, or promise or in any other form.

(b) Neither the mayor, the prosecuting attorney, nor any appointed officer or employee shall solicit, accept, or receive, directly or indirectly, any gift under circumstances in which it can be reasonably inferred that the gift is intended:

(1) To influence the solicitor or recipient in the performance of an official duty; or

(2) As a reward for any official action on the solicitor's or recipient's part.

(c) During each one-year period beginning on July 1st and ending on June 30th, neither the mayor, the prosecuting attorney, nor any appointed officer or employee shall solicit, accept, or receive, directly or indirectly, from any one source any gift or gifts, not exempted by subsection (d), valued singly or in the aggregate in excess of $200.00.

(d) Exempted from the prohibition of subsection (c) are the following:

(1) Gifts received by will or intestate succession;

(2) Gifts received by way of distribution of any inter vivos or testamentary trust established by a spouse or ancestor;

(3) Gifts from a spouse, fiancé, fiancée, any relative within four degrees of consanguinity or the spouse, fiancé, or fiancée of such a relative. A gift from any such person shall not be exempt from subsection (c) if the person is acting as an agent or intermediary for any person not covered by this subdivision;

(4) Political campaign contributions that comply with state law;

(5) Anything available or distributed to the public generally without regard to the official status of the recipient;

(6) Gifts that, within 30 days after receipt, are returned to the giver or donated to a public body or to a bona fide educational or charitable organization without the donation being claimed by the mayor, the prosecuting attorney, or an appointed officer or employee as a charitable contribution for tax purposes. In the event the gift is donated to a public body or to a bona fide educational or charitable organization, the donor shall send, along with the gift, documentation acknowledging the initial giver of the gift; and

(7) Exchanges of approximately equal value on holidays, birthdays, or special occasions.

(e) A violation of this section by the mayor, the prosecuting attorney, or an appointed officer or employee shall be punishable in accordance with Section 3-8.5.

Sec. 3-8.8 Gifts to councilmember--Prohibition under certain circumstances.

(a) No councilmember shall solicit, accept or receive, directly or indirectly, any gift, whether in the form of money, goods, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it can be reasonably inferred that the gift is intended to influence the councilmember in the performance of the councilmember's official duties or is intended as a reward for any official action on the councilmember's part.

(b) During each one-year period beginning on July 1st and ending on June 30th, no councilmember shall solicit, accept, or receive, directly or indirectly, from any one source any gift or gifts, not exempted by subsection (c), valued singly or in the aggregate in excess of $200.00.

(c) Exempted from the prohibition of subsection (b) are the following:

To avoid a violation of the ethics laws and to protect the integrity of your agency and its personnel, the Ethics Commission recommends the six steps described below whenever a gift to an agency is solicited or accepted. Unless otherwise stated, the discussion below assumes that the donor of the gift (1) is a private business, non-profit, charity or individual, and (2) has had, currently has or is likely to seek a business relationship, a permit or otherwise seek official action from the agency receiving the gift.

1. The limits on solicitations by agencies. Many people and businesses rely on city agencies to issues permits, regulate industries or select vendors and enter into contracts. It is important, therefore, that an agency representative not request a donation under circumstances where the request may appear coercive to the person being solicited or create an expectation of special treatment in the mind of a donor. To do so may result in a violation of Section 11-104, Revised Charter of Honolulu (RCH), which prohibits the use of one's official position to obtain special or unwarranted treatment for any person.[3]

For example, if a department head asks a contractor to the department for money to send employees to a work-related conference, the contractor may feel that he "can't say 'No'" without undermining his ability to obtain contracts in the future. Also, if a donation is offered, the contractor may believe he or she is entitled to special treatment by the agency in future dealings. The ethics laws exist to prevent even the appearance of special treatment or coercion.

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(1) Gifts received by will or intestate succession;
(2) Gifts received by way of distribution of any inter vivos or testamentary trust established by a spouse or ancestor;
(3) Gifts from a spouse, fiancé, fiancée, any relative within four degrees of consanguinity of the councilmember or the spouse, fiancé, or fiancée of such a relative. A gift from any such person shall not be exempt from subsection (b) if the person is acting as an agent or intermediary for any person not covered by this subdivision;
(4) Political campaign contributions that comply with state law;
(5) Anything available or distributed to the public generally without regard to the official status of the recipient;
(6) Gifts that, within 30 days after receipt, are returned to the giver or donated to a public body or to a bona fide educational or charitable organization without the donation being claimed by the councilmember as a charitable contribution for tax purposes. In the event the gift is donated to a public body or bona fide educational or charitable organization, the councilmember shall send, along with the gift, documentation acknowledging the initial giver of the gift; and
(7) Exchanges of approximately equal value on holidays, birthdays, or special occasions.

(d) A violation of this section by a councilmember shall be punishable in accordance with Section 3-8.5.

[3] **Revised Charter of Honolulu Section 11-104. Fair and Equal Treatment --**
Elected or appointed officers or employees shall not use their official positions to secure or grant special consideration, treatment, advantage, privilege or exemption to themselves or any person beyond that which is available to every other person.

The Council has set out a policy on gifts to the city in Resolution No. 05-349, the Revised Policy on Solicitation, Receipt and Acceptance of Gifts,[4] which describes some of the limits on city employees and officers who solicit or accept gifts to the city[5]:

> *No city officer or employee having enforcement powers or review authority over any application or permit shall solicit gifts to the city.*

This directive restricts certain officers and employees from soliciting gifts to the city. Personnel who have enforcement powers, such as regulators, police and prosecutors, are not permitted to seek contributions for government purposes from anyone. Similarly, those with discretionary authority over any permit or application to a city agency may not solicit gifts from anyone. The reason for this restriction is to avoid even an appearance of coercion that might arise from officials with discretionary authority over law enforcement or permitting from asking for gifts to the city. The rule does not apply to unsolicited gifts being received by those with enforcement powers or discretionary authority.

Section I.2.a. also limits officers and employees from soliciting or receiving a gift to the city in certain situations:

> *A city officer or employee shall not solicit, receive or accept any gift to the city under circumstances that in fact or in appearance:*
>
> *(1) Rewards, influences or tends to impair the judgment of any city officer or employee in the performance of the officer's or employee's official duties; or*
>
> (2) *Provides special consideration, treatment, advantage, privilege, or exemption for or coerces a potential donor.*

This rule is intended to avoid a contributor using a gift to the city to influence a city official or to expect special treatment. Not everyone is financially able to donate to the city and those who contribute should not be treated favorably compared to those who do not. Further, this section protects the private sector from attempts by city officials to force a donation because the government agency is one that can influence the interests of the potential donor. Therefore, agencies should not solicit gifts from those who are likely to be affected by the agency's official action.

There may be times when an agency will seek aid from the general public, rather than selected individuals. To avoid unintentional ethics violations, the Commission recommends that solicitations by an agency or its representative to the general public be made in writing, not by telephone or in-person. The written request should contain a statement that government action regarding the donor will not be affected by whether or not a contribution is made.

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[4] Resolution No. 05-349 is available on line at the Council's Web site, www.honolulu.gov/council/index1.

[5] Section I.2.a.

2. What to do when a gift is offered to the agency. There are times when a department will be offered donations without any solicitation. The agency should have the donor make the gift to the agency and not directly to the agency's personnel. A gift directly to a city officer or employee might be considered a personal gift, which would trigger application of the gift laws. If the gift is made directly to the officer or employee, he or she will need to show that the gift was intended for use by the agency, not as a personal benefit to the staff member. A gift made directly to the agency, however, does not raise the same problem because the agency head, not the individual officer or employee, will determine how the gift will be used.

3. The gift must be for a legitimate government function. The donation must be made to help the agency carry out a legitimate government function, such as educating its staff about new services or products. A gift to an agency that supports an activity unrelated to the responsibilities of the agency may be a disguised gift for someone's personal benefit and violate the gift or other ethics laws.

4. The gift must only be for reasonable and necessary expenses and not for the sole benefit of the affected officer or employee. The gift may only be for the reasonable and necessary expenses associated with the expressed purpose of the donation. If an officer or employee benefits from a gift to the city that exceeds the reasonable and necessary expenses required to discharge his or her city duties (for example, using first class instead of coach air travel), the gift may violate the gift laws and/or may require reimbursement to the donor for the value of an excessive gift. For more information, see the Revised Guidelines on Gifts or contact the Ethics Commission.

5. Document the gift and the information obtained. Upon receipt of the gift, the agency should send a letter to the donor stating what the funds will be used for and that the gift will not result in any favored treatment for the donor in pending or future procurement or decisions. Also, the agency should prepare a memorandum that discusses the reason for the purpose of the gift (*e.g.*, travel to a conference), whether department funds are available, the cost and time frame of the project for which the gift will be used, the personnel selected by the agency head and other relevant information. Finally, the officers and employees who use the contribution should document what was learned in a narrative report transmitted to those in the agency who would benefit from the knowledge.

6. Report the gift to the Council. The agency must comply with the procedures for reporting and using gifts to the city as established by the Council. These are detailed in Resolution No. 05-349, which has specific requirements for approval of the gift.

These Guidelines are provided for your general information and should not be considered a substitute for specific advice from the Ethics Commission. If you would like advice concerning gifts to an agency or other issues, you may write a letter addressed to the Ethics Commission at 715 South King Street, Suite 211, Honolulu, Hawaii, 96813, email the Commission at ethics@honolulu.gov or call 527-5573.

A violation of the city's ethics laws may result in disciplinary action such as reprimand, probation, demotion, suspension or discharge from employment. Elected city officers may be impeached for a violation. In addition, the violator may be required to reimburse the city for any benefit, fee, compensation or profit received by any one as a result of the violation.[6]

LEX R. SMITH
Chair, Honolulu Ethics Commission

APPROVED FOR DISTRIBUTION:

WAYNE M. HASHIRO
Acting Managing Director

[6] **Sec. 3-8.5 Violation--Penalty.**

(a) The failure to comply with or any violation of the standards of conduct of this article or of Article XI of the revised charter shall be grounds for impeachment of elected officers and for the removal from office or from employment of all other officers and employees. The appointing authority may, upon the recommendation of the ethics commission, reprimand, put on probation, demote, suspend or discharge an employee found to have violated the standards of conduct established by this article. Nothing contained herein shall preclude any other remedy available against such officer or employee.

(b) In addition to any other penalty provided by law, any contract entered into by the city in violation of Sections 11-101 through 11-105 of the revised charter or of this article is voidable on behalf of the city; provided, that in any action to void a contract pursuant to this article the interest of third parties who may be damaged thereby shall be taken into account, and the action to void the official act or action is initiated within six months after the matter is determined by the ethics commission.

(c) The city, by the corporation counsel, may recover any fee, compensation, gift or profit received by any person as a result of a violation of the standards in this article or in Article XI of the revised charter by an officer or employee or former officer or employee. Action to recover under this subsection shall be brought within four years of such violation.